IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No.346 of 1995.
Reserved on: April 17, 2007.
Decided on: April 26, 2007

Dharam Chand **…..Appellant.**

VERSUS

Bholi Devi & Anr. **…..Respondents.**

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] No

For the Appellant: **Mr.K.D.Sood, Advocate.**

For the Respondents: **Mr.Ajay Sharma, Advocate.**

Kuldip Singh, Judge

The defendant is in appeal against the judgment and decree dated 6th September, 1995 passed by learned District Judge, Kangra in Civil Appeal No.69-K-XIII of 1995 vide which the judgment and decree of the trial Court dismissing the suit were set aside. In this judgment, the parties are referred in the same manner as were in the trial Court at the time of institution of the suit.

2. The brief facts are that Smt.Naro Devi filed suit for declaration and permanent prohibitory injunction that the defendant has no right or title in the suit land. The deed of release prepared on 24th August, 1989 is false, fabricated, inoperative, without

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?Yes***

consideration and the document is outcome of misuse of faith and trust and has been obtained by playing fraud and the same be declared null and void, permanent prohibitory injunction has also been prayed restraining the defendant from interfering in the ownership of plaintiff on the suit land, details of suit land have been given in the plaint.

3. The defendant is the nephew of plaintiff. The defendant wanted plaintiff to execute a Will in his favour but the plaintiff did not want to execute any document in favour of defendant without consulting her two daughters. The defendant, however, took the plaintiff to Tehsil Kangra and in clandestine deal with document writer got prepared a deed which is said to be a release deed and forced the plaintiff to make statement regarding her 'Will'. The plaintiff was asked to make statement that she wanted to 'Will' her property to the defendant. However, the Sub Registrar has registered the release deed. The defendant thereafter started proclaiming that he has become owner of the property, hence, sensing doubt about the 'Will' the plaintiff met her daughters and on enquiry she came to know that defendant has been given property by release deed. The release deed has been prepared by mis-representation, fraud and deception. On these grounds, plaintiff filed the suit.

4. The defendant contested the suit and took preliminary objections of lack of cause of action, bar of suit on account of act and conduct of plaintiff. The plaintiff is not in possession of the suit land and, therefore, suit is not maintainable. The objection of valuation and

jurisdiction of the Court has also been taken. On merits, the defendant has pleaded that he is in possession of the suit land. The defendant is nephew of the plaintiff. The plaintiff was never in possession of the suit land. The release deed has been prepared and drafted by the petition writer on the instructions of the plaintiff. She voluntarily executed and registered the release deed on 24th Augsut, 1989. The defendant has denied that the release deed has been prepared by way of inducement, misrepresentation and fraud. It has been submitted that particulars of fraud and misrepresentation have not been given in the plaint. The release deed is genuine. Smt.Naro Devi died during the pendency of suit and her two daughters being her legal representatives were brought on record.

5. The learned trial Court dismissed the suit but in first appeal the suit has been decreed and decree for declaration and injunction, as prayed, was granted by learned District Judge.

6. I have heard the learned counsel for the parties and have also gone through the record.

7. The appeal has been admitted on the following substantial questions of law:-

> "(i) Whether the District Judge has misconstrued and misread the basic document of title DW-3/A which has vitiated the findings?
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> (ii) Whether the due execution of relinquishment deed DW-3/A was proved by Scribe DW-3 Raj

Kumar, DW-2 Hem Raj, DW-4 Bihari Lal and registration thereof by the Sub Registrar and wrong inference have been drawn from the facts proved on record in taking the contrary view?

(iii) Whether the District Judge could grant decree for injunction when the defendant was in possession of the property and the decree is legally sustainable?"

8. The learned counsel for the defendant has submitted that learned District Judge has misconstrued and misread the basic document Ext.DW-3/A. The execution of this document has been proved by scribe DW-3 Raj Kumar and attesting witnesses DW-2 Hem Raj and DW-4 Bihari Lal. The learned District Judge has drawn wrong inference from the material on record. The defendant is in possession of the suit land and decree of injunction has been wrongly granted. The learned counsel for the plaintiff has supported the impugned judgment and decree and has argued that the learned District Judge has rightly decreed the suit of the plaintiff after appreciation of the evidence. No substantial question of law is involved in the appeal. The impugned judgment and decree have been passed after appreciation of the evidence.

Questions No.1, 2 & 3:

9. The simple case of the plaintiff in the plaint is that she never wanted to execute any document in favour of the defendant but

defendant, who is nephew of the plaintiff, got prepared release deed Ext.DW-3/A by playing fraud, deception and misrepresentation. In the plaint, nothing has been attributed to the Sub Registrar as to why he registered the document. The execution of release deed Ext.DW-3/A which has been construed as gift deed by learned District Judge has been proved by scribe DW-3 Raj Kumar and attesting witnesses DW-2 Hem Raj and DW-4 Bihari Lal. PW-1 Smt. Chuhi Devi has stated that Naro Devi was her mother and has died. They two sisters are her heirs. Whole of the property is joint. Smt.Naro had not given any land to defendant. Smt.Naro had everything with her. This is the only statement which has been made in support of the case of the plaintiff. There is no whisper of misrepresentation, fraud and deception by defendant for preparing release deed Ext.DW-3/A in the statement of PWs. The plaintiff has not led any corroborative evidence in support of her allegations of misrepresentation, fraud and deception.

10. DW-1 Dharam Chand has stated that he is nephew of Smt.Naro, her husband had died about 50 years ago. Smt.Naro used to live with defendant and his father. The daughters of Smt.Naro are married. Smt. Naro got executed the release deed voluntarily from scribe Raj Kumar in presence of attesting witnesses Hem Raj and Bihari Lal. The release deed was presented before Tehsildar (Sub Registrar) who read over it to Smt.Naro and she admitted the execution of the release deed. This witness has been cross examined at length but nothing favourable to plaintiff has come in his cross examination. The DW-2 Hem Raj, DW-3 Raj Kumar and DW-4 Bihari

Lal supported DW-1 Dharam Chand, defendant on the point that Smt.Naro has executed release deed Ext.DW-3/A voluntarily.

11. The learned District Judge has observed in the impugned judgment that since Smt.Naro was living with defendant after the death of her husband, the defendant was in a position to influence her Will and presumption of undue influence on the part of the defendant can be safely raised. This conclusion of the learned District Judge is beyond the case set up by the plaintiff. In the plaint, no case of undue influence has been pleaded. The plea in the plaint is of misrepresentation, fraud and deception. The plaintiff has miserably failed to prove misrepresentation, fraud and deception on the part of the defendant for preparing release deed Ext.DW-3/A. In fact, there is no iota of evidence to this effect on record. The plaint otherwise lacks material particulars of fraud, misrepresentation and undue influence, as required under Order 6 Rule 4 C.P.C.

12. The release deed Ext.DW-3/A was got prepared on 24th August, 1989 and on the same date it was got registered. It appears after the execution of the release deed the daughters of the plaintiff came to know about the execution of the release deed in favour of the defendant which is otherwise clear from the averments made in Para-4 of the plaint. Thereafter plaintiff filed the suit vide plaint dated 1st September, 1989 challenging the release deed which is an after thought step of the plaintiff to wriggle out of the release deed. There is presumption under Section 60 of the Registration Act of due execution of the registered document. This presumption has not been rebutted.

There is no allegation against the Sub Registrar for registering the release deed.

13. The plaintiff at the time of execution of release deed Ext.DW-3/A was 60 years old. It has come on record that she was not in actual possession of the suit land. The defendant is a co-sharer in the land. On these facts, decree of permanent injunction has been wrongly passed against defendant.

14. The defendant has established that Smt.Naro voluntarily, knowingly executed release deed Ext.DW-3/A in his favour. The learned District Judge has misconstrued and misinterpreted the pleadings and has drawn wrong inference from the material on record. The questions No.1, 2 and 3 are answered in favour of the defendant and against the plaintiff and accordingly the impugned judgment and decree are liable to be set aside.

15. No other point was urged.

16. In view of the above discussion, the appeal is accepted. Impugned judgment and decree are set aside. The suit of the plaintiff is dismissed and the parties are left to bear their own costs.

April 26, 2007 ***(Kuldip Singh)***
(soni) ***Judge***